

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE:	§	
	§	
BNP PETROLEUM CORPORATION	§	CASE NO. 09-20206
	§	
	§	CHAPTER 7
	§	INVOLUNTARY
ALLEGED DEBTOR.	§	PETITION PENDING

**BNP PETROLEUM CORPORATION'S ANSWER TO FIRST AMENDED
INVOLUNTARY PETITION**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

BNP Petroleum Corporation ("BNP"), alleged debtor herein, by and through its undersigned counsel, files this Answer to the First Amended Involuntary Petition (the "Answer") pursuant to 11 U.S.C. § 303 in response to the first amended involuntary petition (the "Amended Involuntary Petition") filed with this Court on May 1, 2009 (the "Amended Petition Date") by Baker Hughes Oilfield Operations, Inc., Schlumberger Technology Corporation, and La Copa Field Services, Inc. (collectively, the "Petitioning Creditors"),¹ and in support of the Answer, BNP respectfully states as follows:

ANSWER

1. Unless specifically admitted below, BNP generally denies each and every allegation contained in the Amended Involuntary Petition.
2. BNP admits that on the Amended Petition Date the Amended Involuntary Petition was filed against it by the Petitioning Creditors.
3. BNP admits that the business address, which appears on the face of the Amended Involuntary Petition is correct.

4. BNP denies that the Petitioning Creditors are eligible to file the Amended Involuntary Petition pursuant to 11 U.S.C. § 303.

5. BNP denies that it is generally not paying its undisputed debts (as to liability or amount) as they become due.

A. The Petitioning Creditors do not meet the statutory requirements of 11 U.S.C. § 303

6. Sections 303(b), (h), and (i) combine to establish at least six requirements for the filing of an involuntary petition: (1) at least three petitioning creditors; (2) the petitioning creditors must hold an aggregate of \$13,475.00 in unsecured claims against the alleged debtor; (3) the claims must not be contingent; (4) the claims must not be the subject of a bona fide dispute as to liability or amount; (5) the debtor must generally not be paying its undisputed debts as such debts become due; and (6) the petition must be filed in good faith. *See* 11 U.S.C. § 303.

7. Compliance with these requirements of section 303 by the Petitioning Creditors is absolutely critical, and the bankruptcy court has broad discretion to compensate an alleged debtor and punish a petitioning creditor if the court determines that the involuntary petition was improperly filed. 11 U.S.C. § 303(i). The Court should scrutinize the Amended Involuntary Petition carefully because it is an extreme remedy with serious consequences for the alleged debtor, including loss of credit status, business interruption, and public embarrassment. *See e.g., In re Reid*, 773 F.2d 945, 946 (7th Cir. 1985) (noting that "the filing of an involuntary petition is an extreme remedy with serious consequences to the alleged debtor.").

8. This Court should dismiss the Amended Involuntary Petition because the Petitioning Creditors have failed to meet the requirements of § 303 of the Bankruptcy Code.

¹ T Hunt Inc. d/b/a T & T Construction ("Hunt") filed a motion to join in the involuntary petition [Dkt. No. 10]. The Court continued the hearing on Hunt's motion to join to date of the trial on the Involuntary Petition.

Specifically, the Petitioning Creditors' alleged claims are subject to a bona fide dispute and they have failed to provide sufficient evidence to show that BNP is not generally paying its undisputed debts as they come due.

(i) The Petitioning Creditors have not shown the absence of a bona fide dispute as to liability or amount with regard to their alleged claims

9. The Petitioning Creditors have the burden of establishing a *prima facie* case that there is no bona fide dispute. *See Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 221 (5th Cir. 1993). The 2005 amendments to the Bankruptcy Code clarify that the claims of petitioning creditors cannot be subject to dispute as to liability or amount. 11 U.S.C. § 303(b). Moreover, the majority of courts addressing the issue have determined that a bona fide dispute as to any amount or portion of the claim will invalidate the entire claim for purposes of filing an involuntary petition under § 303. *See Regional Anesthesia Assocs. PC v. PHN Physician Servs. (In re Regional Anesthesia Assocs. PC)*, 360 B.R. 466, 470 (Bankr. W.D. Pa. 2007); *In re Euro-American Lodging Corp.*, 357 B.R. 700 (Bankr. S.D.N.Y. 2007); *In re Bimini Island Air*, 370 B.R. 408 (Bankr. S.D. Fla. 2007); *In re Orlinsky*, 2007 Bankr. LEXIS 1520 (Bankr. S.D. Fla. Apr. 24, 2007); *In re Hentges*, 351 B.R. 758 (Bankr. N.D. Okla. 2006).

10. A bona fide dispute exists if there is an objective basis for either a substantial factual or a legal dispute as to the validity of the debt. *See In re Sims*, 994 F.2d at 221. The Petitioning Creditors have failed to provide sufficient evidence to prove that their alleged claims are not subject to dispute as to liability or amount. Therefore, the Amended Involuntary Petition should be dismissed.

(1) Baker Hughes Oilfield Operations, Inc.

11. Baker Hughes Oilfield Operations, Inc ("Baker Hughes") alleges that it has a qualifying claim under § 303 against BNP in the amount of \$563,892.37 (the "Baker Hughes

Claim"). The Baker Hughes Claim is subject to a bona fide dispute because the amount of the Baker Hughes Claim does not account for various credits and/or offsets that were agreed to by Baker Hughes and BNP under the terms of a settlement agreement (the "Settlement Agreement"). See Settlement Agreement, attached hereto as **Exhibit A**. According to paragraphs 3 and 4 of the Settlement Agreement, BNP apparently owes Baker Hughes \$568,892.37 plus interest and various attorneys' fees, less credits and/or offsets described in paragraph 3(iii). Despite the fact that BNP is entitled to additional credits and/or offsets, Baker Hughes is asserting a claim for \$568,892.37 (an amount that does not account for offsets). Because the Baker Hughes Claim does not include credits and/or offsets to which BNP is entitled under the Settlement Agreement, the Baker Hughes Claim is subject to a bona fide dispute as to the amount of the claim. See *In re Henry*, 52 B.R. 8, 10 (Bankr. S.D. Ohio 1985) (ability of debtor to off-set liability subjects the claim to a bona fide dispute). Although prior to the 2005 BAPCPA amendments courts generally required the off-set to fully or almost fully extinguish the claim in order to create a bona fide dispute, the amendments now make clear that a dispute as to the amount of the claim is a bona fide dispute invalidating the claim under § 303. See e.g., *In re Regional Anesthesia Assocs. PC*, 360 B.R. at 470 (noting that "as a result of the [2005] amendment, any dispute regarding the amount that arises from the same transaction and is directly related to the underlying claim should render the claim subject to a bona fide dispute"). Therefore, because the Baker Hughes Claim is disputed as to amount, Baker Hughes is not eligible to be a petitioning creditor under § 303. Accordingly, the Amended Involuntary Petition should be dismissed.

(2) Schlumberger Technology Corporation

12. Schlumberger Technology Corporation ("Schlumberger") alleges that it has a qualifying claim under § 303 against BNP in the amount of \$172,100.37 (the "Schlumberger Claim"). The Schlumberger Claim is subject to a bona fide dispute because a portion of the claim is owed by an entity other than BNP. The Schlumberger Claim includes amounts for materials and/or services that were provided by Schlumberger with respect to an oil and gas well that is not owned or operated by BNP. Schlumberger therefore does not qualify as a petitioning creditor under § 303 because at least a portion of the Schlumberger Claim is subject to a bona fide dispute as to liability or amount. *See e.g., In re Regional Anesthesia Assocs. PC*, 360 B.R. at 470.

(3) La Copa Field Services, Inc.

13. La Copa Field Services, Inc. ("La Copa") alleges that it has a qualifying claim under § 303 against BNP in the amount of \$258,096.40 (the "La Copa Claim"). La Copa will most likely argue that the La Copa Claim is not subject to a bona fide dispute because La Copa has obtained a default judgment against BNP in the 343rd Judicial District of San Patricio County, Texas in the amount of the \$258,096.40. However, BNP has filed a motion to set aside the default judgment, or in the alternative, for a new trial. *See* Motion to Set Aside Judgment, attached hereto as **Exhibit B**. La Copa's default judgment against BNP is not final and should be set aside because BNP was not properly served with La Copa's complaint. La Copa's judgment is being challenged, and therefore the judgment does not provide evidence that the La Copa Claim is undisputed. To the contrary, prior to filing the Amended Involuntary Petition, La Copa should have known that its claim was disputed because in BNP's Motion to Set Aside Judgment, BNP asserted that it had a meritorious defense to the La Copa Claim. *Id.* at ¶ 3.2; *Cf. Adell v. John Richards Homes Bldg Co. (In re John Richards Homes Bldg Co.)*, 439 F.3d 248

(6th Cir. 2006) (noting that the bankruptcy court found that petitioner knew or should have known that his claims were the subject of a bona fide dispute because the debtor had already asserted defenses in response to petitioner's state court complaint). La Copa is therefore not eligible to be a petitioning creditor under § 303 because it has failed to meet its burden of showing that its claim is not the subject of a bona fide dispute.

(4) T Hunt d/b/a T&T Construction Corporation

14. Hunt filed its Motion to Join in the Involuntary Petition on April 20, 2009. BNP filed its Amended Objection to T Hunt's Motion to Join in Involuntary Petition as Additional Petitioning Creditor [Dkt. No. 41] on May 11, 2009 (the "Objection to Joinder"). The Objection to Joinder is incorporated by reference as if fully restated herein. For the reasons provided in the Objection to Joinder, Hunt is not eligible to be a Petitioning Creditor.

(ii) **The Petitioning Creditors have failed to show that BNP is generally not paying its debts as they come due**

15. The Petitioning Creditors have the burden to establish that BNP was generally not paying its debts as they became due as of the Amended Petition Date. *In re Xacur*, 219 B.R. 956, 963 (Bankr. S.D. Tex. 1998). Courts have considered the following factors to determine whether an alleged debtor is generally not paying its debts as they become due: (1) the number of unpaid claims; (2) the amount of such claims; (3) the materiality of the non-payments; and (4) the debtor's overall conduct in its financial affairs. *See In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000). The Petitioning Creditors have failed to provide sufficient evidence that BNP was not generally paying its debts as they became due, and therefore the Amended Involuntary Petition should be dismissed.

AFFIRMATIVE DEFENSES

16. BNP's debts allegedly owed to the Petitioning Creditors (and those seeking to join the Amended Involuntary Petition) are disputed as to liability and/or amount.

17. BNP is generally paying its debts as they become due.

RECOVERY OF COSTS AND ATTORNEYS' FEES

18. Upon dismissal of the Amended Involuntary Petition, BNP is entitled to recover from the Petitioning Creditors its costs and reasonable attorneys' fees pursuant to 11 U.S.C. § 303(i). Section 303(i) provides in relevant part:

- (i) if the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment –
 - (1) against the petitioners and in favor of the debtor for –
 - (A) costs; or
 - (B) a reasonable attorney's fee.

11 U.S.C. § 303(i).

19. BNP therefore seeks recovery of all costs and reasonable attorneys' fees.

PRAYER

WHEREFORE, BNP respectfully requests that the Court: (1) dismiss the Amended Involuntary Petition; (2) enter an order denying the relief sought by the Petitioning Creditors in all respects; (3) grant an award against the Petitioning Creditors in favor of BNP for its costs and reasonable attorneys' fees pursuant to 11 U.S.C. § 303(i); and (4) grant BNP such further and other relief as is equitable and just.

Respectfully submitted,

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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the parties listed in the attached Service List via electronic means as listed on the court's ECF noticing system or by regular U. S. First Class Mail on this 20th day of May, 2009.

By: /s/ Marcy E. Kurtz

Marcy E. Kurtz

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